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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.40 OF 2007

Hindustan Petroleum Corpn.Ltd.
and another ... Petitioners

versus

Trade Center Developers and
Builders Pvt.Ltd. ... Respondent

Shri N.V.Walawalkar, Sr.Advocate with Mr. M. D. Siodia i/by rustamji & Ginwala for petitioners.

Mr.K.Y.Mandlik for respondent.

CORAM : A.S.OKA, J.

DATE : 05th April 2007

PC :

1. The submissions of the learned counsel appearing for the parties were heard on the last date. There is a decree for possession passed by the Trial Court and confirmed by the Appellate Court against the petitioners. The respondent is the original plaintiff. The predecessor of the respondent, by an indenture dated 1st October 1958 had leased the suit property in favour of M/s.Standard Vaccum Oil Company. the lease was for a period of twenty years commencing from 3rd

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December 1958 with an option for renewal for a further period of ten years on the same terms and conditions. In view of the provisions of Esso (Acquisition of Undertaking in India) Act, 1974 all rights of M/s.Standard Vaccum Oil Company were vested in the present first petitioner. The option provided under the lease was exercised by the petitioner and, therefore, the period of lease was extended by a period of twenty years i.e. up to 30th September 1998. A notice was served by the respondent on the first petitioner of termination of tenancy calling upon the petitioners to vacate. A suit was filed by the respondent in the Court of Small Causes at Pune for eviction of the petitioners. According to the case made out by the respondent, the business of the respondent is of construction of buildings. According to the case of the respondent, the construction activities were already commenced on the said property except on a part of the said property which was let out to the petitioners. Therefore, a decree for possession was claimed on the ground that the respondent reasonably and bona fide requires the suit property for the purposes of demolition and for erection of new building. The Courts below have found that the requirement was established

by the respondent. The Courts below have also dealt with the issue of hardship.

2. The learned Senior Counsel appearing for the petitioners submitted that bona fide requirement was not established by the respondent. He submitted that insofar as issue of comparative hardship is concerned, a petrol pump was in existence on the suit property since last several years and therefore, if the same is closed down the members of the public will suffer prejudice. He further submitted that the suit was filed even before the extended period of lease had expired and therefore, the suit itself was not maintainable being premature.

3. I have considered the submissions. Insofar as issue of bona fide requirement is concerned, there are concurrent findings of fact recorded by the Courts below. The decree has been passed under section 13(1)(i) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. The evidence has been led by the respondent to establish the requirement. The respondent has led evidence to show that it’s business is of the construction of buildings. The building plan of the proposed building on the suit property

prepared by the respondent was also produced and proved before the Trial Court. It was also established that the plan was submitted for sanction and the local authority had called upon the respondent to produce no objection from the petitioners. The Appellate Court has observed that the competence and eligibility of the respondent-plaintiff in carrying on construction has not been challenged by the petitioner. Moreover, it is observed that the financial support and ability of the respondent to erect a new building is also not challenged by the petitioner. After having found on the basis of the material produced on record that construction of various other buildings is completed by the respondent, the learned Judge has accepted that the requirement has been duly established. Though as per the settled law, the learned Trial Judge as well as Appellate Court were under no obligation to consider the issue of comparative hardship, the same has been dealt with at length. It is found that in the vicinity of the suit property there are other petrol stations owned by the petitioners.

4. It is very difficult to find fault with the concurrent findings recorded by the Courts below

on the aforesaid aspects.

5. So far as third submission is concerned, the Courts below and especially the Appellate Court has referred to the settled principles of law. Once a case was established by the respondent-plaintiff for passing a decree of eviction under the provisions of a Rent Control Legislation, the Court was empowered to pass a decree even before expiry of period of lease provided under the Deed of Lease. Apart from this fact the Courts below have noted that during pendency of the suit, the extended period of lease expired.

6. No case is made out for interference under the revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908. Hence, revision application is rejected.

7. At this stage the learned senior counsel appearing for the petitioner prayed that the decree for possession may not be executed for a sufficiently long time as the petitioners desire to approach the higher Court. Said request is opposed by the advocate for the respondent.

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8. Considering the facts and circumstances of the case, the decree for possession shall not be executed till 15th August 2008 subject to condition that the petitioners will not create any third party interests or part with possession of the suit property and will keep on paying the compensation equivalent to rent. If there are any arrears, the same shall be paid within a period of eight weeks from today.

(A.S.OKA, J.)